IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 806 OF 2007

Mr. Satishkumar Krishnaji Udare ..Petitioner

Vs.

M/s. Balaji Packaging Industries ..Respondent

Mr. N.A. Kulkarni for petitioner.

Mrs.Meena Doshi for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : December 14, 2007.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioner.

2. Rule. Mrs. Doshi waives service for the respondent.

3. Rule is taken up for final hearing forthwith.

4. As per the petitioner he was holding the post of Administrative Assistant under the respondent and he was removed from service with effect from 15/6/1990. Therefore, he raised a demand for reinstatement in service with continuity and full backwages and the same was referred for adjudication in Reference (IDA) No.198 of 1991. On 2/4/2004 the petitioner as well as his Advocate remained absent before the Labour Court and, therefore, Reference (IDA) No. 198/91 came to be dismissed and award was passed on 2/4/2004 as the petitioner did not remain present and lead evidence. The Labour Court also noted that after the statement of claim was filed in a reference, Written Statement was filed at Exh.9 on 19/1/1991 and on 10/1/2003 the reference was listed before the Lok Adalat. On 23/4/1994 an issue regarding the status of the petitioner as "workman" as defined under the Industrial Disputes Act, 1947 came to be framed and thereafter other issues were also framed. The petitioner was present before the court on 11/6/03, 26/8/03, 17/11/03 and on 6/1/2004 he

applied for adjournment which was granted. On 1/3/2004 the Advocate for the petitioner was absent and, therefore, the petitioner submitted an application for adjournment which was granted on the condition that on 2/4/2004 the petitioner would remain present for recording evidence but he did not do so and, therefore, reference was dismissed for non prosecution.

5. While deciding the restoration application, which was opposed by the present respondent, the following two issues were framed:-

(a) Whether Misc.Application is maintainable?

(b) Whether there is sufficient cause for restoring original Reference (IDA) No.198 of 1991?

The first issue was answered in the negative, but as per the Labour Court the second issue did not survive

on account of the finding on the first issue.

6. As per Mr. Kulkarni the learned counsel for the petitioner the award was published on 4/11/2004 and though admittedly the restoration application was filed before publication of the award, it was pending when the award was published and Exh.12 was an application filed by the respondent on 7/12/2004. Mr. Kulkarni, therefore, submitted that the application for restoration could not have been dismissed on the ground that it was not maintainable as it was filed before publication of the award dated 2/4/2004. The learned Judge of the Labour Court has referred to the judgments of the Supreme Court in the case of Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and ors. [1980 Supp. SCC 420] and Sangham Tape Company vs. Hans Raj [2004 (8) JT 109] and held that the restoration application filed before the publication of the award was not maintainable. The relevant observations of the Labour Court on issue no.1 read as under:-

> "The question is whether the miscellaneous application for restoration filed before the award has become enforceable and is maintainable or not and in view of judgment of Hon'ble Supreme Court in the case between M/s. Sangham Tape Company V/s. Hans Raj, the answer is that such application is not maintainable."

It is thus clear that the application was not considered on merits, though oral evidence was recorded before the application was decided.

7. The application for restoration was filed on 11/6/2004 and the award was published on 4/11/2004. The application has been dismissed as not maintainable on 2/3/2006. Section 17 of the I.D. Act, 1947 states that every award of the Labour Court shall, within a period of thirty days from the date of its receipt by

the appropriate Government, be published in such manner as the appropriate Government thinks fit and subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever. As per Section 17A(1) an award shall become enforceable on the expiry of thirty days from the date of its publication under section 17. In Grindlays Bank’s case (Supra) the Supreme Court, therefore, held that an application for restoration filed beyond 30 days from the publication of the award was not maintainable as the Labour Court/Industrial Tribunal would become functus officio. The learned Judge of the Labour Court in the instant case held that the corollary of Section 17 would be applicable and any application filed before the publication of the award would not be maintainable. This approach of the Labour Court is hyper technical. It ought to have been considered by the Labour Court that while the application was pending, the award was published and the publication proof was brought on record. It was, therefore, necessary to decide the application on merits rather than dismissing it on technicalities.

The view taken by the Labour Court has resulted in miscarriage of justice. Rule 26(2) of the Industrial Disputes (Bombay) Rules 1957 states that where any award, order or decision is made exparte under subrule (1), the aggrieved party, may, within thirty days of the receipt of a copy thereof, make an application to the Labour Court to set aside such award, order or decision and if the Labour Court is satisfied that there was sufficient cause for non appearance of the aggrieved party, it may set aside the award and shall appoint a date for proceeding with the matter. The proviso states that no award shall be set aside on any application unless notice thereof has been served on the opposite party. Thus the aggrieved party is entitled to submit a restoration application within 30 days of the receipt of the copy of the award and it is not necessary that for submitting such an application the party concerned has to wait for its publication. In the instant case the petitioner had submitted an application on or about 9/6/2004 stating that after the reference was dismissed in default on 2/4/2004 he had immediately applied for certified true copy of the said award and it could not be issued. He further

gave an undertaking to the court that certified true copy of the award dated 2/4/2004 would be submitted as soon as the same is received by him. Consequently, the impugned order passed by the Labour Court is unsustainable and the Labour Court fell in manifest errors in dismissing the restoration application.

8. Hence, the petition succeeds and the same is hereby allowed. The impugned order dated 2/3/2006 is hereby quashed and set aside and Misc. (IDA) Application No. 18 of 2004 stands restored. It is directed that the said application be heard and decided on merits as expeditiously as possible and in any case within a period of three months from the receipt of writ from this court. Parties are at liberty to adduce additional evidence, if so desired.

(B.H. Marlapalle,J.)